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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,716	01/11/2002	John Langenfeld	270/070	1276

26259 7590 03/03/2006

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EXAMINER
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RAWLINGS, STEPHEN L

ART UNIT	PAPER NUMBER
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1643

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/044,716	<b>Applicant(s)</b> LANGENFELD, JOHN	
	<b>Examiner</b> Stephen L. Rawlings, Ph.D.	<b>Art Unit</b> 1643	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☒ They raise the issue of new matter (see NOTE below);  
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

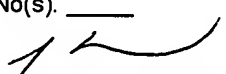
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1,6 and 17-19.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

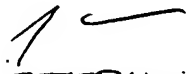
#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

  
 Stephen L. Rawlings, Ph.D.  
 Examiner  
 Art Unit 1643

Continuation of 3. NOTE: With regard to claim 1, the amendment, if entered, would necessitate new grounds of objection, since claims 1, 6, and 17-19 would then be drawn in the alternative to the subject matter of non-elected species of invention. Furthermore, the amendment, if entered, would raise the issue of new matter, since the claims would then be directed to an effective amount of noggin to antagonize binding of BMP-2 to BMP-2 receptor. Although Applicant has asserted the amendment would introduce no new matter, since as Applicant has argued at page 6 of the amendment, "[g]iven that these polypeptides are known in the art and further known to antagonize binding of BMP-2 to BMP-2 receptor, one of skill in the art would readily recognize in Applicants disclosure that Applicant was in possession of that which is now claimed", there does not appear to be written support in the specification, including the claims, as originally filed, for the present claim language. At paragraph [0057] of the published application (i.e., U.S. Application Publication No. ), the specification discloses: A "bone morphogenetic protein-2 activity inhibitor" is a composition that antagonizes the activity of the BMP-2 protein by specifically binding to it or to BMP receptors, blocks the activation of pro-BMP-2, or prevents the replication or transcription of the BMP-2 gene or the translation of BMP-2 mRNA into protein". This disclosure, however, does not appear to provide written support for treating lung cancer by administering an effective amount of noggin to antagonize binding of BMP-2 to BMP-2 receptor. Accordingly, while perhaps this issue might be resolved if Applicant were to point to particular disclosures in the specification, as filed, which are believed to provide the necessary written support, at present, it appears entry of the amendment would raise the issue of new matter. Finally, entry of the amendment to claim 6 would raise a new issue, since the claim would be amended to recite, "wherein the noggin polypeptide human noggin of SEQ ID NO:4", which is not gramatically correct. For these reasons, the proposed amendment, if entered, would not place this application in condition for allowance, nor would it place this application in better form for appeal by materially reducing or simplifying the issues for appeal.

Continuation of 11. does NOT place the application in condition for allowance because: The request for reconsideration has been considered but its merit is predicated upon entry of the proposed amendment, which has not been entered; therefore, Applicant's arguments are presently moot.

  
STEPHEN RAWLINGS  
ART UNIT 1643